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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,521	11/03/2003	Jacques Habatjou	233773US26	1399
22850	7590	07/19/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER DOAN, ROBYN KIEU	
			ART UNIT 3732	PAPER NUMBER
			NOTIFICATION DATE 07/19/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/698,521	Applicant(s) HABATJOU, JACQUES	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 12-14, 17 and 39-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15, 16, 18-38 and 59-65 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/4/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's Amendment filed 4/17/2007 has been entered and carefully considered. Claims 1, 12, 24, 33 have been amended. New claims 59-65 have been added. The indicated allowability of claims 33, 34 is withdrawn in view of the newly submitted reference(s) (IDS cited references). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 15, 16, 18-21, 59-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 63-129512 (IDS cited reference).

With regard to claim 1, JP '512 discloses a case (fig. 1) comprising a base part (1) holding a reserve of product (2), a lid (9) covering the base part and a sealing member (14) arranged to close in a leak tight manner a space containing the product, at least when the lid is closed, wherein the sealing member being supported by a pivot (at 15) so that the sealing member is rotatable about at least two mutually perpendicular geometrical axes of rotation, wherein the pivot being supported by a first element (13), the first element being pivotably with respect to the base part about a pivot axis (at 10).

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JP '512 fails to show the sealing member being supported by a ball joint, however, it would have been an obvious matter of design choice to construct the pivot as taught by JP '512 with a ball joint, since such modification is well known in the art. In regard to claims 2, 3, 5, 6, it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the pivot central portion having a resiliently deformable part, the cup being made of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. And it would also have been an obvious matter of design choice to glue the cup onto the base part, since such modification is well known in the art. In regard to claim 4, the case further having a cup (5) supported by the base part and containing the product. In regard to claim 7, the cup having a free edge (7) against which the sealing member can bear. In regard to claim 8, the sealing member being arranged to bear on the base part (see fig. 2) at least when the case is closed. In regard to claim 9, the sealing element having a plate (14). In regard to claim 10, the lid is pivotable with respect to the base part (see fig. 1). In regard to claim 11, the sealing member is attached to the lid (via first element 13). In regard to claims 15 and 16, 18, 59-64, the sealing member being movable along an axis perpendicular to the two axes and the sealing member provides an initial lift effect (see fig. 1) to reduce a force needed to detach the sealing member from a surface against which the sealing element bears in a leak tight manner. In regard to claim 19, the pivot being supported by a support (13) element. In regard to claim 20, the sealing

element having a plate (14) having an asymmetrical feature. In regard to claim 21, the plate having a variation in thickness (see fig. 1).

Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '512 in view of Dreschler et al (U.S. Pat. # 6,071,503).

With regard to claims 22 and 23, JP '512 discloses a case comprising all the claimed limitations in claim 1 as discussed above except for the product being isododecane. Dreschler et al shows a cosmetic composition comprising isododecane (col. 30, line 30). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the isododecane solvent as taught by Dreschler et al into the cosmetic product of JP '512 for the intended use purpose.

Claims 24-38, 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP '512 in view of JP 63-111810 (IDS cited reference).

With regard to claims 24-26, 32, 33, 37, JP '512 discloses the cosmetic compact having a base (1) with a first compartment (at 2) and a second compartment (at 3), a lid (9) coupled to the base and movable to a closed lid position in which the lid covers the base, a cover member (14) with a central portion (at 16) and a peripheral portion, the cover being movable from an open position, in which the first and second compartments being not covered by the cover member, to a closed position, in which the first compartment (2) being covered by the cover member and the second compartment is not covered by the cover member, the cover member being coupled to the lid portion

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(via member 13). JP '512 fails to show the cover member being coupled to the lid via a central portion of the cover member, wherein the central portion having a ball joint in a receptacle and the receptacle being attached to the lid via arms. JP '810 discloses a cosmetic compact having a base (12), a lid (15) coupled to the base, a cover member (18) having a central portion (16) coupled to the lid via arms (21, 17). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the cover member as taught by JP '810 into the cover member of JP '512 as an alternative way to tightly seal the product contained within the compartment. It would also have been an obvious matter design choice to construct the central portion as taught by JP '810 with a ball joint, since such modification is well known in the art. In regard to claims 27, 30, 31, JP '512 shows the case having a cosmetic product (6) in the first compartment (2). In regard to claims 28, 29, JP '512 shows the second compartment (3) carrying an applicator (8). In regard to claims 34-36, 38, It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the material of the arms being flexible, the central portion having a deformable material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 6/4/2007 prompted the new

ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner
Art Unit 3732

rkd
July 9, 2007